

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CHARLENE ROYCE, as parent and guardian of:
TIFFANY M. WHEELER, a Minor,

Plaintiff,

v.

THOMAS R. WHEELER, LISA W.
HUZELLA, and MICHAELON A. WRIGHT,
each individually and as acting successor trustee
of the Thomas M. Wheeler Revocable Trust, u/a
dated April 9, 1986, as Amended and Restated,
43 WEST 64TH STREET LLC, a Michigan
corporation, and WHEELER FAMILY
FOUNDATION, INC., a Delaware nonprofit
corporation,

Civil Action No.: 07-CV-10968 (RWS)

AFFIDAVIT OF
DONALD R. BROOKS

Defendants,

– and –

KRYSTAL WHEELER,

Nominal Defendant.

STATE OF FLORIDA)
)
) ss:
COUNTY OF PALM BEACH)

DONALD R. BROOKS, being duly sworn, hereby deposes and says:

1. I have known Thomas M. Wheeler ("Mr. Wheeler" or the "Decedent") for approximately 25 years, and have been a business associate, confidante and close personal friend of his during that time.

2. I submit this affidavit in support of the Defendants' Motion to Dismiss the above-captioned action for lack of subject matter jurisdiction. I base this affidavit upon my personal knowledge and a review of relevant records and public filings. I am not related to the Decedent and I am not entitled to receive any portion of his Estate or Trust.

Mr. Wheeler's Business Interests and Contacts With Texas

3. For approximately twenty years prior to his death, Mr. Wheeler was domiciled in and owned property in El Paso, Texas, where he had his primary residence.

4. Mr. Wheeler was a businessman and entrepreneur. Mr. Wheeler started the company now known as TMW Enterprises, Inc. ("TMW Enterprises," formerly known as Electro-Wire Products, Inc. ("Electro-Wire")) in the early 1980's. From the inception of Electro-Wire and up until the time of his death, Mr. Wheeler served as the Chairman or Vice Chairman of the company. Mr. Wheeler, through the Thomas M. Wheeler Trust, arising under agreement originally dated April 9, 1986, as amended and restated thereafter (the "Trust"), owned approximately 70% of the issued and outstanding stock of TMW Enterprises.

5. From inception through the sale of principally all of the operating assets in 1995, the company maintained its principal manufacturing headquarters in El Paso, Texas. From this base of operations, the company operated 8 plants in Mexico, three in El Paso and approximately 5 others around the U.S. and one in Canada. At the time of the sale in 1995, the company employed over 6,000 employees. As a result of the sale, the company maintained the real estate used in the operations of the manufacturing business and only 6 employees remained with Mr. Wheeler.

6. After Mr. Wheeler sold the core operations of Electro-Wire in 1995, the successor company was renamed TMW Enterprises. TMW Enterprises is engaged in a variety of business and real estate ventures.

7. After 1995, and separate from TMW Enterprises, Mr. Wheeler and his Trust were involved in different business activities, including the acquisition of certain businesses in El Paso, Texas, which were subsequently combined into what is today known as Millennium Plastics Technologies, LLC ("Millennium"). Millennium employs approximately 100 people and operates from leased facilities in El Paso, Texas. The Trust has made financial accommodations to and for the benefit of Millennium over the years.

8. Mr. Wheeler and/or his Trust were involved in construction and development activities, including a development of approximately 225 residential apartments in El Paso, Texas, and a development of approximately 275 residential apartments in Alamogordo, New Mexico.

9. Up until his death, Mr. Wheeler was active in the operations of TMW Enterprises and frequently communicated from his home in El Paso, Texas.

Events Leading Up To Mr. Wheeler's Death

10. In approximately late 2005, Mr. Wheeler was diagnosed with kidney cancer. Mr. Wheeler had received treatment for his cancer since early 2006, and was responding well to the treatment.

11. In or around September of 2006, Mr. Wheeler sought cancer treatment at the Mayo Clinic in Arizona. To avoid staying in a hotel, Mr. Wheeler stayed at the Arizona vacation home of his son, Thomas R. Wheeler, in Fountain Hills, Arizona.

12. During this time, Mr. Wheeler gave regular instruction regarding the operation of his business ventures and the disposition of his assets, including his request to amend his estate and trust planning through modifications to his will and Trust. He conducted planning meetings with various managers of his businesses for which I

attended in person on one or more occasions. For several months leading up to his death, Mr. Wheeler and I discussed changes to his will and Trust.

13. While in Arizona, Mr. Wheeler obtained permission from his doctor to travel to Florida in late January or early February 2007. Mr. Wheeler came to my home in Florida where he stayed to attend the Super Bowl, which was being held in Miami, Florida, and to meet with a real estate broker to view property in Florida which had been referred to him by his daughter, Michaelon A. Wright. Mr. Wheeler also authorized Ms. Wright to enter into a contract to purchase the property, which Mr. Wheeler anticipated would become his primary residence.

14. At various times, Mr. Wheeler discussed with me his succession plan. Mr. Wheeler also requested that I become a member of the Board of Directors of TMW Enterprises, so that I could provide counsel and guidance to his eldest children in the administration of TMW Enterprises, as well as the Trust and his estate.

15. Approximately a day after arriving at my home in Juno Beach, Florida, Mr. Wheeler suffered a setback, causing him to be hospitalized. He subsequently died on February 9, 2007.

Administration of the Estate and Trust

16. Mr. Wheeler planned his estate and Trust under the assumption that he would consummate the purchase of the Florida property and move there, but his plans were never realized.

17. Following his death, Mr. Wheeler's three eldest children, Michaelon A. Wright, Thomas R. Wheeler and Lisa W. Huzella, acting in their capacities as Independent Co-Executors of the Estate of Thomas M. Wheeler, deceased ("Co-Executors"), and in their capacities as Co-Trustees of the Thomas M. Wheeler Trust ("Co-Trustees"), arising under an agreement originally dated April 9, 1986, as amended

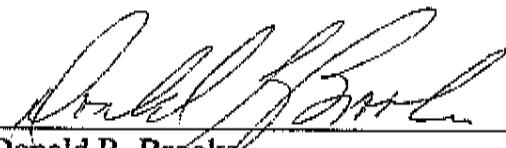
thereafter ("Trust"), began the process of complying with the provisions of the Will and Trust by collecting Mr. Wheeler's assets, identifying his debts and making initial tax payments.

18. Because of Mr. Wheeler's relationship to El Paso, Texas, including the location of his permanent residence, the Co-Executors of the Estate filed a probate petition in a Texas court, and undertook other Trust activities in Texas.

* * * * *

The above facts are true and correct, to the best of my knowledge, information and belief.

DATED: Palm Beach, Florida
March 14, 2008


Donald R. Brooks

Sworn to and subscribed
before me this 14 day of March, 2008.



Notary

